Central Law Journal

St. Louis, December 5, 1924

RIGHT OF TRIAL BY JURY UNDER THE CLAYTON ACT FOR CONTEMPT OF COURT

The Supreme Court of the United States has reversed the lower court in the cases of Michaelson et al. v. The United States, ex rel. Chicago, St. Paul, Minneapolis & Omaha Railway Company and Sandefur v. Canoe Creek Coal Company (45 Sup. Ct. 18). These cases were argued together and disposed of in the same opinion. The principal question presented in the Michaelson Case, and the sole question in the Sandefur Case, was whether the provision of the Clayton Act requiring a jury trial in certain specified kinds of contempt is constitutional. Subordinate questions presented in the Michaelson Case were: Whether petitioners were, or whether it was necessary that they should be, "employees" within the meaning of Section 20, of the Act; whether the acts alleged to constitute the contempt were also criminal offenses under the statutes of the United States or of the State where committed; whether the provision for a jury is mandatory or permissive.

The petitioners in the Michaelson Case were striking employees of the Chicago, St. Paul, Minneapolis and Omaha Railway Company, and, with others, were proceeded against by bill in equity for combining and conspiring to interfere with interstate commerce by picketing and the use of force and violence, etc. After a hearing a preliminary injunction was granted. Subsequently, proceedings in contempt were instituted in the District Court, charging petitioners with sundry violations of the injunction; and a rule to show cause was issued. Upon the answer and return to the rule, petitioners applied for a jury trial under Section 22 of the Clayton Act, but the District Court denied the application and proceeded without a jury. It will be remembered that the decision of the District Court was given at some length in the Journal and that it was founded upon the proposition that Congress is without power to take from the District Court its inherent right to proceed in contempt matters in accordance with its own will. At the conclusion of the hearing, the petitioners were adjudged guilty, and thereupon the case was taken to the Circuit Court of Appeals by writ of error, and by that court the judgments were affirmed (291 Fed. 940).

The first question disposed of was whether the provision of the Clayton Act granting a right of trial by jury is constitutional. Upholding the provision of the Act the court, in part, said:

"But it is contended that the statute materially interferes with the inherent power of the courts and is therefore invalid. That the power to punish for contempts is inherent in all courts, has been many times decided and may be regarded as settled now. It is essential to the administration of justice. The courts of the United States, when called into existence and vested with jurisdiction over any subject, at once become possessed of the power. So far as the inferior federal courts are concerned, however, it is not beyond the authority of Congress (Ex parte Robinson, 19 Wall. 505, 510-511; Bessette v. W. B. Conkey Co., 194 U. S. 324, 326); but the attributes which inhere in that power and are inseparable from it can neither be abrogated nor rendered practically inoperative. That it may be regulated within limits not precisely defined may not be doubted. The statute now under review is of the latter character. It is of narrow scope, dealing with the single class where the act or thing constituting the contempt is also a crime in the ordinary sense. It does not inter-

fere with the power to deal summarily with contempts committed in the presence of the court or so near thereto as to obstruct the administration of justice, and is in express terms carefully limited to the cases of contempt specifically defined. Neither do we think it purports to reach cases of failure or refusal to comply affirmatively with a decree—that is to do something which a decree commands—which may be enforced by coercive means or remedied by purely compensatory relief. If the reach of the statute had extended to the cases which are excluded a different and more serious question would arise. But the simple question presented is, whether Congress may require a trial by jury upon the demand of the accused in an independent proceeding at law for a criminal contempt which is also a crime. In criminal contempts, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt and the defendant may not be compelled to be a witness against himself. Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 444. The fundamental characteristics of both are the same. Contempts of the kind within the terms of the statute partake of the nature of crimes in all essential particulars. 'So truly are they crimes that it seems to be proved that in the early law they were punished only by the usual criminal procedure, 3 Transactions of the Royal Historical Society, N. S. p. 147 (1885), and that at least in England it seems that they still may be and preferably are tried in that way.' Gompers v. United States, 233 U. S. 604, 610-611. This is also pointed out by counsel in the case of O'Shea v. O'Shea and Parnell, L. R. 15 Prob. Div. 50, 61; and, in the course of one of the opinions in that case, it is said (p. 64): 'The offence of appellant (criminal contempt) is certainly a criminal offence. I do not say that it is an indictable offence, but, whether indictable or not, it is a criminal offence, and it is an offence, and the only one that I know of, which is punishable at common law by summary process.' The proceeding is not between the parties to the original suit but between the public and the defendant. The only substantial difference between such a proceeding as we have here, and a criminal prosecution by indictment or information is that in the latter the act complained of is the violation of a law and in the former the violation of a decree. In the case of the latter, the accused has a constitutional right of trial by jury; while in the former he has not. The statutory extension of this constitutional right to a class of contempts which are properly described as 'criminal offences' does not, in our opinion, invade the powers of the courts as intended by the Constitution or violate that instrument in any other way."

The next question dealt with was whether or not the strikers were still to be considered "employees" within the meaning of the Clayton Act, so as to entitle them to trial by jury. It was argued, and so held by the lower courts, that because they had gone out on strike the relationship of employer and employee had come to an end. The dispute out of which arose the unlawful acts alleged in the bill was one between the employer on the one hand and its employees on the other, respecting terms or conditions of employment, namely, the scale of wages to be paid employees of the class to which defendants belong. This dispute had been submitted to the Railroad Labor Board, which, after a hearing, had fixed the scale to be paid. The defendants declined to abide by the action of the Board and went out on strike, and in furtherance thereof conspired together and committed various unlawful acts in restraint of respondent's interstate commerce. The purpose of the strike was to bring about an increase in wages. The Supreme Court stated that the case was obviously within

the provision of Section 20, in respect of injunctions. The court below held that, while ordinarily this was so, it was not so in this instance because the employer was a railroad company, bound to continue its operations in the public interest and therefore not on an equal footing with its employees, and that because, since the scale of wages had been fixed by the Railroad Labor Board, the strike, in effect, was against the Board, a governmental instrumentality, to be classed with the insurrection of the Boston policemen. In disposing of this question the Supreme Court said:

"To say that railroad employees are outside the provisions of the statute, is not to construe the statute, but to engraft upon it an exception not warranted by its terms. If Congress had intended such an exception, it is fair to suppose that it would have said so affirmatively. The words of the act are plain and in terms inclusive of all classes of employment; and we find nothing in them which requires a resort to judicial construction. The reasoning of the court below really does not present a question of statutory construction, but rather an argument justifying the supposititious exception on the ground of necessity or of policy—a matter addressed to the legislative and not the judicial authority. Neither was the strike one against the Labor Board. It was a strike notwithstanding the action of the Board, but against the respondent. The policemen's strike was against a governmental employer. The Labor Board was not an employer but an arbitrator, whose determination, moreover, had only the force of moral suasion. Pennsylvania Railroad Co. v. Labor Board, 261 U. S. 72, 84. Moreover, it is to be observed that Sections 21 and 22, which deal with the subject of contempts, do not contain the limitation in respect of employment contained in Section 20. Section 21 provides: 'That any person who shall wilfully disobey any lawful writ, process, order, rule, decree or command of any district court,' etc., 'shall be proceeded against for his contempt as hereinafter provided.' Section 22 provides for a trial by jury upon demand of the accused in all cases within the purview of the act. Whether the general language of Section 21 should be limited by construction because it forms a part of an act dealing with unlawful restraints and monopolies, or for any other reason, we need not now stop to inquire. It is enough to say that in a controversy, such as we have here, at least, it does not require the existence of the status of employment at the time the acts constituting the contempt are committed, in order to bring into operation the provision for a trial by jury."

The court further held that the provision of the Act for a jury is mandatory and not merely permissive.

CONCERNING CONFESSIONS OF CRIME

Confessions are continuing obstacles upon which law officers constantly trip with disastrous results. This is so whether the person be merely suspected and not under arrest, or formally charged with a crime and in custody. Is there no way but a sound police discretion to prevent repetitions? It would seem not. Comment concerning it may prove helpful, though not necessary, after the citations from the Supreme Court opinion that follows:

"A confession is voluntary in law if, and only if, it was, in fact, voluntarily made." The words quoted were by Mr. Justice Brandeis in the Ziang Sing Wan Case (Nov. 1, 1924, 45 Sup. Ct. 1). The fact that that painstaking jurist merely examined and condemned the specific act before him without going further, is basis enough for the conclusion we have just had the temerity to assert. He lays down

an unmistakable limitation upon the participation of the policeman. "In the federal courts," said the learned Justice, "the requisite of voluntariness is not satisfied by establishing merely that the confession was not induced by a promise or a threat." That confessions must be approached without prejudice, it is pointed out that "a confession may have been given voluntarily, although it was made to police officers, while in custody and in answer to an examination conducted by them."

A specific limitation which we shall presently quote is so succinctly set down that at the hands of discreet persons, not led astray by overzeal, it should prove very helpful to both state and federal officers. There is no hope for any other kind. But the real aid is in so defining involuntariness that it will be understood in the police station to the extent of becoming unethical. Honest apprehension should not be permitted to dull a laudable desire. Therefore help in that direction may not prove unwelcome, for policemen generally take pride in keeping within the law. Let us turn now to Mr. Justice Brandeis for more light. "Confession obtained by compulsion must be excluded, whatever may have been the character of the compulsion, and whether the compulsion was applied in a judicial proceeding or otherwise."

Wherefore it becomes necessary for the police to know what "compulsion" means when practically applied. In that lies their one difficulty.

Confident in the belief that one may be technical on occasion without being abstruse, light can be had in contrasting "voluntary," a condition precedent to all confessions, with its antonym "compulsion;" and "willingness" with its antonym "reluctance." Now having the mind favorably inclined or disposed is to be willing; otherwise there is dissent, reluctance and unfavorableness on the part of the subject. Viewed in this light compliance might be achieved through deceit or even mistake, as to which the average police officer is in need of no illustration, as reluctant as he is to accept that doctrine.

The suggestion is ventured that the test of an admissible confession may with reasonable correctness be defined as mental. Indeed, the learned Justice seems to have sought the mental attitude of the prisoner in the principal case, and having concluded that mental duress had been exercised by the police in the process of procuring the confession, summarily condemned it. There was quoted in the margin the testimony of the police that the prisoner had been kept awake night after night while he was ill and that he had been persistently questioned until relays of robust inquisitors themselves were well nigh exhausted! While the processes were purely mental it is equally true that they were so conducted as to produce physical weakness in the suspect and a consequent lack of resistance to the will of another. That being the result the agency becomes immaterial.

But, although there was no evidence of physical violence, it is doubtful if the measure of cruelty practised was much lessened. This is one of the most difficult distinctions that a zealous policeman is called upon to draw. The police intention was precisely the same—to so weaken the resistance as to dominate the will of the suspect that he might become "inclined or disposed to respond to their wish." To that extent police circles have risen little above the barbarity of medievalism. In that view civilization finds itself dozing at the very door of justice. Obviously the Supreme Court has performed a service to civilization in peremptorily condemning the practice.

But there is another side that will not be overlooked by the practical. We will be informed without protest that gentle conduct is not characteristic of murderers;

nor is the influence of truth and ethics persuasive; that hypocrisy and cunning reside under their smug or surly countenances, and murder is in their hearts. We will go so far as to concede that a viper is a high priest of ethics compared with the average chronic criminal, and they generally deserve the same end.

One whose sympathy naturally goes out to the policeman without measuring the consequences, might hastily conclude therefore that modernity is justified in borrowing the ordeal from the Middle Ages; that the devil must be fought with fire; that crime seeks the darkness and voids witnesses in all its activities, whereby the police are bereft of all evidence except the confession of the criminal; and that any and all means are justifiable. One might as well set that down and be done with it, for it is a fair photograph of the policeman's viewpoint, a man whose life is carried almost hourly in his hand. And from his standpoint there is no more fruitful, if any, course open.

Conceding all these things as concrete difficulties coloring the judgment of the sleuth, and admitting the social necessity for the prompt and certain punishment of crime, the truth of the converse is no wise lessened. Must the policeman be permitted to select a citizen, possessing equal rights with all others until condemned by a final judgment of the court, to be kept upon the rack in order that police wisdom may be vindicated? Must atonement be made with the blood of the innocent that justice appear not unwhipped; or public clamor be appeased; or police reputation be not degraded? However, these things cannot merely be answered in the negative and brushed aside without tendering a remedy, except at a great cost of police usefulness. Deprived of one instrument they must be given another. If they have aimed low it may be that they have not been directed higher.

A suggestion is therefore ventured. If the measure of voluntariness is mental, the processes for obtaining admissible confessions must be of the mind and not of the muscle. By which it is meant to say that the policeman must measure his wits against that of the criminal or the suspect. He must call to his aid those permissible devices that have long characterized the successful sleuth and that have made many an enviable reputation. The work of the successful detective is necessarily of the highest order of mental activities. An absolute control of the faculties has ever marked that dangerous and diverting profession. And yet the best of them have achieved without violence and have died peacefully in their own bed chambers after a life of splendid service to society. And all this is true without giving way to fertile imagination and wandering afield in search of a Sherlock Holmes or an Edgar Allen Poe.

So, when Mr. Justice Brandeis condemned violence in obtaining confessions he did not close the door to crime detection nor even deter the scientific searcher after the author of crime. What he did was to elevate the ethics of a splendid and useful profession by bringing into play its brains instead of its brawn; by substituting modern for the medieval viewpoint. And he accomplished it by merely administering the law as civilized Americans have written it for the guidance of the courts. He had no other course open to him.

One would find a deep source of regret in the conviction that the police have been "handicapped" by the law of the cited opinion, for with equal justification might the police patrol run down pedestrians using the highways, or an officer shoot at a fleeing prisoner in a crowded street with fatal results to the innocent. In both instances the police would be "handicapped" that being the definition

of any limitation upon their actions in preparing cases against suspects.

The reason for all this is that America is governed by principles and not by expediency. There are certain fundamental rules intended to assure the sanctity of the rights of the individual citizen that must be observed at whatever cost. The famous Boston Tea Party never grew out of a parsimonious dislike to paying a few pennies a pound on tea, but a noble concept of the sacred governmental principle that there cannot be lawful taxation without representation; that without the consent of the suffragan no limitation upon natural rights is justified.

The unanimous judgment of the great Supreme Court of the United States did not grow out of a desire to interfere with police efforts in crime detection, nor a sentimental sympathy for accused persons or those suspected by virtue of their association with crime. It emanated from a deep conviction of the organic law upon which our forefathers grounded this New World, that keenly distinguishes it from the barbaric tyranny of the Old, where the power of an individual official over life and liberty is as great before conviction as after; where the habeas corpus cannot pry open unlawfully closed prison doors; where the enjoyment of individual liberty and property rights is measured by the whim, the prejudice or the bias of Government officials. Conviction through involuntary confession and police subjection to mental or physical tyranny to that end, fall so little short of Old World methods as to defy distinction. But while rejoicing at its judicial condemnation one may confidently predict no lessening of detection and conviction of crimes at the hands of an intelligent American police force.

THOMAS W. SHELTON.

Anxious Wife: "Abe, have you done anything about that horrible Black Hand letter?"
Abe: "Oh, ain't I, though. I turned it over to my insurance company. They got $20,000 tied up in me; let them worry."

NOTES OF IMPORTANT DECISIONS

AN OMISSION

In the number for November 20th, through an oversight, our Editor failed to give the citation under State Income Tax Act Held to Deny Equal Protection of Law. The case quoted from is Standard Lumber Co. v. Pierce, Supreme Court of Oregon, 228 Pac. 812.

NOVEL QUESTION OF NEGLIGENCE.—Municipal Court Justice John Hetherington, sitting in the Sixth District, Borough of Manhattan, has decided a novel question in the law of negligence.

Employees of the New York Telephone Company left a large empty wooden cable reel on Lexington avenue at or near One Hundred and Second street. In some way it became loose and rolled down the hill to Third avenue, where its course was deflected, and it ran diagonally across the street and crashed through the show window of the furniture store of Nathan Ginsberg, at No. 1843 Third avenue.

Mr. Gingsberg, in his action for damages, asserted that the reel had been blocked and held stationary only by means of a brick or stone, which was utterly insufficient and indicated negligence. The defendant's witnesses gave evidence to the effect that on emptying the reel they placed it, tied together, with a similar one, on East One Hundred and First street, and then fastened legs or joists to the reels using heavy twine and large nails. The job was so thoroughly done, it was averred, that only by means of a hammer or crowbar could the reels be freed. Testimony was also offered suggestive of the interference by boys as to the cause of the reel starting on its trip.

In denying a motion to set aside a judgment for $989.49 in favor of the plaintiff Justice Hetherington said in part:

"First, however, the court desires to state that while much testimony was adduced to support defendant's version of the occurrence, it was by no means convincing. For instance, the men charged with the duty of leaving the reel securely fastened had their skirts to clear of the suggestion that they were careless and hence to blame. The officer on Lexintgon avenue, who testified to a light being on the reels about 11:15 P. M., although in the vicinity, saw no interference and heard no noise indicating any, yet defendant's men claim that the reels could not have been disengaged without the aid of hammer or crowbar and considerable noisy labor, and the residents who were called

as witnesses, although claiming to have seen two reels at One Hundred and First street, do not indicate anything extraordinary to impress this fact upon their minds, and reels aplenty were about the neighborhood as the work progressed. It can hardly be said that defendant sustained the burden of explanation.

But now on the law: Defendant's citation of a number of cases dealing with released automobiles and somnolent dangerous elements started into destructive agents by interference is most interesting, but if, as counsel argues, the conclusion of this whole matter is that in a case such as the one at bar a plaintiff cannot recover, then it is well to withdraw from the maze of case law and its confusion of fine distinction and seek the principles whereon law and order, rights and remedies were founded. Addison in his work on Torts (Vol. 1, sec. 1, sub. 13, p. 8) lays down a rule which we may well apply here. "Wherever a party is guilty of misconduct in leaving anything dangerous in a place where he must know it to be extremely probable that some other person will unjustifiably set it in motion to the injury of a third person, and that injury is brought about, the sufferer may have redress by action against both the wrongdoers unless he has himself been a co-operative cause of the injury of which he complains under circumstances which deprive him of a claim to legal redress."

"The defendant at bar, in leaving this reel on the public highway, was at best a mere licensee (the streets are not designed as places of storage for anyone's property), and was chargeable with a knowledge that it might become attractive to children and even to mischievous adults, hence its duty was to secure it against any interference. The testimony given concerning the method of fastening it is highly suggestive that defendant appreciated this obligation. That it was released and turned into an engine of destruction is indicative of negligence and failure to secure it.

"Such an object, on or near a down grade, needs no stretch of imagination or super-intelligence to demonstrate that it is a menace. Defendant admits that these reels when empty were usually carted to the yards to await return to the cable manufacturer, and to suit defendant's convenience it was left on the highway until defendant's truck could pick it up with other of its kind, and that there was no better way of securing it. If that be so, that there was no better way of securing it, then defendant should have carted it away at once, for defendant's convenience, as licensee of the highway, is but poor excuse for damage done one of the citizens.

"As well might it be argued that if on a hunting trip, stepping into a place of refreshment, I leave for convenience a loaded gun on a chair or bench against the highway and a child or even an adult comes along and pulls the trigger, injuring a passerby through discharge of the gun, I am not negligent.

"Plaintiff's claim for damages is extremely modest and has been fully established."—N. Y. Law Journal.

FAILURE TO USE SAFETY APPLIANCE NOT "WILLFUL MISCONDUCT."—The failure by a workman to use a safety appliance is held by the Supreme Court of Tennessee, in Ezell v. Tipton, 264 S. W. 355, to amount to mere negligence and not willful misconduct, or willful failure or refusal to use a safety appliance, under the Workmen's Compensation Act of that State. A part of the court's opinion is as follows:

"It is next insisted that the court erred in not refusing to allow petitioner compensation, for the reason that he willfully failed and refused to use a safety appliance in two particulars: First, the lever situated on the right-hand side of the gin stand, designed and located for the express purpose of stopping the gin machinery when it became necessary for the operator to clean or do any work about the gin and machinery; and, second, in failing to use the long stick kept for use by the operator of the gin in cleaning lint cotton from under the gin saws, which it is claimed could have been used by petitioner without danger of being caught or entangled in the gin machinery.

"Also by the tenth assignment of error it is insisted that the court erred in not disallowing petitioner's claim for compensation because he willfully and deliberately wore heavy buckskin gloves with large, loose and flappy cuffs, in violation of the instructions of his superior, and when he knew the danger incident to wearing them while operating the gin.

"These assignments are not well taken. There is no evidence in the record tending to show that petitioner's injury was the result of willful misconduct, or that the injury was intentionally self-inflicted, or due to his willful failure or refusal to use a safety appliance. At most, petitioner's failure to use such appliance was mere negligence.

"In Railroad v. Wright, 147 Tenn. 619, 250 S. W. 903, where the evidence showed that there was posted on the bulletin boards in the shops of the railroad company the rule requiring the use of goggles by its shop employees, and, although the plaintiff had been furnished

goggles, he was not wearing them at the time of the accident, this court held that although he may have been negligent in not reading the posted order, negligence is not the equivalent of willfulness. 'Willfully' means intentionally; that is, the person doing the act intended at the time to perform that act. State v. Smith, 119 Tenn., 521, 105 S. W. 68.

"The court, speaking further on the question of plaintiff's willful failure to observe the rule, or use the goggles which had been furnished him by his employer, said:

" 'But beyond all this, as used in this connection in workmen's compensation statutes, according to the great weight of authority, "willful failure" to observe a rule or use a safety appliance is not a mere voluntary failure. Otherwise contributory negligence would defeat a recovery under a compensation statute. Willful misconduct means something more than negligence. It carries the idea of deliberation and intentional wrongdoing.'

"In Bohlen-Huse Coal & Ice Co. v. McDaniel, 148 Tenn. 628, 257, S. W. 848, the deceased was killed while driving a motor truck in the service of defendant as the result of a collision between that vehicle and another. The trial judge found that deceased was not operating the motor truck in conformity to the ordinances of the city of Memphis, but concluded that his conduct was negligent and not willful, and allowed compensation."

LIABILITY OF MILLER FOR INJURY CAUSED BY POISONOUS SUBSTANCE IN FLOUR.—The case of Hertzler v. Manshum et al., 200 N. W. 155, decided by the Supreme Court of Michigan, holds that the manufacturer of foodstuffs is liable to consumers purchasing from retail dealers for breach of implied warranty arising from foreign poisonous substances therein, notwithstanding the want of privity of contract between the manufacturer and the consumers. The case further holds that in an action against the miller and retail dealer for death caused by arsenate of lead in flour, the plaintiff was not required to show affirmatively that poisoned flour was the result of either the miller's or the dealer's negligence, and was not required to show how or when such poison became mixed with the flour; proof of the presence of the arsenate of lead in the flour constituting a prima facie showing of negligence. A portion of the court's opinion is quoted as follows:

"Under the instruction given the jury by the learned trial judge plaintiff, in order to recover, was required to show affirmatively that through the want of ordinary care either of the miller or the dealer, the poison got into the flour. If the poison was in the flour when furnished by the dealer to plaintiff's decedent, one or both defendants are liable, unless they can excuse themselves. Even ordinary care ought to keep arsenate of lead out of flour. Prima facie, the poisoned flour was the result of some one's negligence. It was not, and could not have been, the result of deterioration or change. The poisoned flour speaks for itself; unexplained, it evidences negligence, for no proof of negligence could be more direct than the flour with arsenate of lead in it. If the poison was in the flour when delivered by the dealer, plaintiff was not bound to show how or when it became so mixed, or offer substantive evidence of want of care on the part of either or both defendants. The ruling, confining plaintiff's right of recovery to an affirmative showing of negligence on the part of defendants, placed an unwarranted burden upon her, and relieved defendants from fighting out between themselves the issue of where the blame, if any, lay for the injury done, and was erroneous.

"Defendant Hanchett contends for nonliability under the general rule that the manufacturer of an article or commodity sold a retail dealer is not liable to a subsequent purchaser upon an implied warranty for injuries due to defects or impurities therein. This general rule is based on want of contractual relation. But foodstuffs do not fall within the rule of want of privity between the manufacturer and ultimate consumer, with a retail dealer intermediate. Flour is a food product, prepared and distributed for human consumption, and it comes from the manufacturer to the dealer for sale to consumers with the guaranty to consumers that it is free from poisonous foreign substances. The law, recognizing the imperative need of consumers of foodstuffs to rely upon the care of manufacturers thereof, and the inability of consumers in a case like the one at bar to detect injurious impurities or poisonous substances therein, and the complex system of modern production and distribution, holds the manufacturer, who prepares foodstuffs destined to be sold to and consumed by the public, liable to consumers purchasing from a retail dealer for a breach of the implied warranty arising from foreign poisonous substances therein, and there only by reason of want of a high degree of care.

"The cases cited by counsel and other cases upon the question of the liability of the manu-

facturer of foodstuffs to the ultimate consumer, appear hopelessly at variance. Some deny liability at all; some recognize liability upon an implied warranty of wholesomeness, some plant liability upon an implied negligence in case of foreign poisonous substances; while others hold liability depends upon a substantive showing of negligence. We experience no inclination to enter upon a review of such cases. We have before us a case of a foreign poisonous substance in flour, and our opinion is confined to such a case."

CUSTOM AND USAGE AS AFFECTING C. I. F. CONTRACTS.—It is considered well settled that in an ordinary c. i. f. contract title passes to the buyer as and when the seller delivers the goods to the shipper, pays the freight to point of destination and forwards to the buyer the bill of lading, invoice, insurance policy and receipt showing payment of freight. Mee v. McNider, 109 N. Y., 500; Williston on Sales, sec. 407, 408; Mechem on Sales, Vol. II, sec. 1736; Seaver v. Lindsay Light Co., 233 N. Y. 273.

This rule, however, is not controlling in all cases. It is subject to the rule that the intention of the parties must prevail. The very important case of Kunglig-Jarnvagsstyrelsen v. Dexter, 299 Fed. 991, illustrates this fact. In this case the declaration was for breach of contract for the sale of coal. It alleged that the defendant sold and the plaintiff bought a cargo of coal at an agreed price per ton, "said price including cost, insurance and freight upon said coal prepaid to the port of Malmo." The price was to be paid against delivery in the City of New York, shipping documents, including insurance policies, bills of lading and invoice. The complaint further alleged that the plaintiff established a letter of credit with a New York bank, in which it instructed the bank to pay the price on receipt of invoice, shipping documents or policies of insurance; that the bank, contrary to instructions, paid the purchase price without demanding policies of insurance, and received in lieu thereof only a certificate of insurance declaring under the hand of defendant's insurance broker that insurance had been underwritten in London for account of defendant; that under the law of England such a certificate was not a policy of insurance within the meaning of such a contract of sale; that the coal was lost at sea and that the plaintiff had paid the bank; that the insurance broker had not taken out any insurance when the certificate was issued to the bank.

The answer admitted that the contract was a c. i. f. contract, which provided for delivery of the coal purchased at Malmo. It alleged that the cargo in question was shipped under the contract; that it was the universal custom in the United States in cases of "c. i. f." sales for the seller to have the option of New York or London insurance; that in case of London insurance the seller might procure it through an American broker who would in turn, through a London broker, secure the actual policy and the latter would cable back when he had fixed it; that on receipt of such cable the New York broker would issue a certificate of insurance; that this custom was followed in the case at bar, and that defendant paid the New York broker who indorsed the certificate and the bank accepted the papers on tender.

The certificate of insurance in question recited that the insurance of necessary amount had been issued by "London underwriters" for the account of defendant on the shipment in question; that the policies of London underwriters would be exchanged on demand for the certificate as soon as practicable; that the insurance was placed subject in all respects to English laws and customs governing marine and war risk insurance.

To this answer plaintiff interposed a demurrer which tested the validity of the answer and brought before the court the question as to whether or not a universal custom or usage would make a tender of a certificate of insurance a valid tender under the provisions of a c. i. f. contract.

The learned court, after an exhaustive review of the English and American authorities on the subject, held that where a usage of the kind set forth in the answer has become uniform in an actively commercial community it is to be presumed by the courts that it answers the needs of those who are dealing upon the faith of it and represents the understanding of the parties who executed the contract. Therefore, the court concluded, such custom and usage is controlling and, in the instant case, tender of defendant and acceptance by the bank of a certificate of insurance instead of a policy must be held a sufficient tender.

We quote the more important portion of the court's opinion as follows:

"When a usage of this kind has become uniform in an actively commercial community, that should be warrant enough for supposing that it answers the needs of those who are dealing upon the faith of it. I cannot see why judges should not hold men to understandings which are the tacit presupposition on which they deal. From Lord Holt's time on they

have generally in one way or the other been forced in the end to yield to the more flexible practices of commercial usage. So far as I know the results have been generally acceptable to everyone once they were settled.

"The objections to this specific usage are that it is unreasonable and that it contradicts the contract. The first objection may be divided into two parts: First, that it compels the buyer to take insurance the full terms of which he has no opportunity to see, and, second, that it exposes him to a broker's lien. As to the first, it would be formidable if the contract prescribed the terms of the policy to be delivered, but it does not. Any policy would do which was adequate marine protection within tolerable limits. The certificate at bar contains some of the terms of the policy actually underwritten, and for the balance refers to 'English law and customs.' Now it is quite true that such a reference leaves much uncertain, but can any one say that it is less certain than the permissible latitude in the provisions of a policy which the seller might tender and the buyer must accept? That law is a standard of reference as definite as the contract prescribed, and I can see no ground for declaring a usage unreasonable which substituted one for the other. Certainly the situation is toto cœlo different from such a tender under a contract which stipulated for the delivery of an approved policy of insurance.

"The other supposed unreasonable feature of the usage is that there might be a broker's lien upon the policy for premiums. The New York broker could have none, because the lien is possessory (Spring v. So. Car. Ins. Co., 8 Wheat., 268, 285, 5 L. Ed., 614; Rose v. Shinasi, 168 App. Div., 93, 153 N. Y. Supp., 734), and he has given up the certificate. The London broker might indeed have a lien for the premium paid by him, even though the seller paid the New York broker (Fisher v. Smith, L. R. 4 App. Cas. 1); but he would have no general lien (Manss v. Henderson, 1 East, 335), because he knew that the policy was for a third person. Therefore, the objection comes to this: Though the seller pays the premium to the New York broker, a usage is unreasonable which exposes the buyer to the possibility of a lien for that premium in favor of the London broker, whom the New York broker does not pay. In the first place, is it altogether clear that the London broker could hold his lien if he knew that the certificate was to pass to a third person and would represent the policy which he retained? Assuming that he could and that the usage leaves the buyer exposed to such a risk it does not on that account appear to me to be beyond reasonable limits because of that possible injustice. Usages are never of importance unless they modify rights which would otherwise result. The fact that the usage imposes a risk upon the buyer which he would not incur if a policy were delivered is not, I think, so vital to the substance of the contract that it may not be interpolated into the contract by implication.

"This raises the general question of how far the usage contradicts the language of the contract. 'Insurance' certainly does not literally mean a 'policy of insurance.' When the buyer has a policy of insurance awaiting his demand and covering the loss, and that alone, why should the situation be thought to contradict a contract giving him only 'insurance'? Is it less insurance because, though he has received symbolic delivery of the policy and actual delivery of the document which controls its production, he has not the policy itself? I must own that I cannot see why.

"But the conventional statement of the rule is really not susceptible of consistent application anyway, and has been recognized not to be by the best writers. Words mean what the parties who use them want them to mean, and it makes no difference how widely their meaning in a special case varies from their common meaning. It is true that in deciding how far any specific usage can be supposed to vary that normal meaning the extent to which that meaning is set awry ought to be an important consideration, but that is all. At least that, I am glad to say, is the authoritative rule in this court (Eames v. Claflin, C. C. A., 2, 239 Fed. 631, 152 C. C. A. 465; Nicoll v. Pittsvein Coal Co., C. C. A. 2, 269 Fed. 968).

"There appear to be no American cases on the point here at bar, but Vietor v. Nat. City Bank (200 App. Div. 557, 193 N. Y. Supp. 868, 206 App. Div. 664, 199 N. Y. S. 955, and 237 N. Y. 538, 143 N. E. 733) is not far away. There the New York courts went much further in allowing a usage to wrest common terms from their common meaning. The issue was whether a receipt for water carriage, signed by a transportation company, could by usage fulfill the definition of a bill of lading. The seller, presenting such a document, was held to make a good tender."

On returning from Sunday School one day, a little girl asked: "Mother, does the Lord have an automobile?"

"Why, no, dear, what made you think that?" said the mother.

"Today;" answered the child, "My Sunday School teacher said if we are good we go up on high."

COLLISION AS APPLIED TO ACCIDENT INSURANCE COVERING DAMAGE TO AUTOMOBILES

By John B. Reno

A collision narrowly interpreted is the impact of objects—visible, tangible and concrete—through any one of such objects moving against the other,[1] or more simply, as the striking together of two objects.[2]

The definition of Collision in Automobile Insurance is still in a process of development and extension, and because of this development and extension of the meaning of the word, some insurance companies insert express exclusions of damage resulting from contacts with roadbed, or way, ditch or gutter, railroad ties, or rails, or from those contacts with the earth or other object primarily due to upsets or overturns. The more usual and customary clause in insurance policies of this kind provides indemnity for damage "caused solely by collision with another object, either moving or stationary," or "caused solely by collision with another automobile, vehicle or other object." These two phrases have been judicially construed as meaning the same thing, and it has been held that the rule of ejusdem generis does not apply to the words "other object" in the second clause, for the reason that "automobile" and "vehicle" are inclusive, and embrace all moving objects of their class, and consequently that a wider and more comprehensive signification must be given to the word "object."

In the leading case of Bell v. American Insurance Company,[3] the facts were that an automobile tipped over, caused by one side thereof gradually settling into the ground. Logically such a case would be included with the meaning of the above terms and constitute a collision, for it is the forcible contact of the automobile with the earth. The court, however, distinguished between the popular meaning of the word "collision" and its scientific signification as set forth in the above definitions and held that a falling body in the popular use of language is not said to collide with the earth, and recovery was accordingly denied.

This case has been followed and its reasoning and conclusion have been applied in Moblad v. Western Indemnity Co.,[4] where it was held that where the edges of the roadway on which an automobile had swerved gave way, causing the automobile to overturn, the damage to the automobile in coming in contact with the ground was caused solely by collision with another object within the provisions of the policy.

A similar view was taken by the Supreme Court of Alabama in Continental Casualty Co. v. Paul,[5] where it was held that the phrase "collision with any moving or stationary object," did not include damage caused by contact with the earth or with an object in falling over an embankment along the highway where the driver of a car left it standing on a hillside and it rolled down an embankment. In Great Eastern Casualty Co. v. Salinsky,[6] the Supreme Court of Tennessee followed the ruling laid down in American Insurance Co. v. Bell, and held that where an automobile was traveling along a public highway and the brakes having been suddenly clamped on, causing the car to skid and the rear wheel to collapse, there was no collision, within the terms of the policy, even though the road had been recently oiled and loose gravel spread upon the roadbed.

In New Jersey Insurance Co. v. Young[7] the facts were that a defective axle broke and the car pivoting on the broken axle turned over and was damaged. The plaintiff was non-suited on the ground that the damage was proximately caused by the breaking of the axle, and did not result from an accidental "collision with an object."

The conclusion here reached may be subject to question, but the premises are in-

(1) Fresberger v. Globe Indemnity Co., 205 App. Div. 116; 199 N. Y. Supp. 310.
(2) Young v. New Jersey Ins. Co., 194 Fed. 492.
(3) 173 Wis. 533; 181 S. W. 733; 14 A. L. R. 180.
(4) 53 Cal. App. 683; 200 Pac. 750.
(5) 209 Ala. 166; 95 So. 814.
(6) 263 S. W. 71 (Tenn., May, 1924).
(7) 290 Fed. 155.

defensible. The policy does not require that the collision should be the proximate cause of the damage. If such were the case there would be few recoveries, for the reason that nearly all collisions, especially those with non-moving objects, result from the negligence of the driver of the automobile, and the damage is but a secondary consequence. It would seem that the risk covers damage resulting from collision regardless of cause, and the fact of collision however produced, determines liability. Cases like the above are misleading in that the sole question to be answered is whether there has been a collision within the terms of the policy, and not what produced it. It is inconceivable that, given facts which show a collision covered by the terms of the policy, the negligence of the driver of the automobile could be interposed as a defense where it is not disputed that such negligence was the proximate cause of the collision.

In Harris v. American Casualty Co.,[8] where the policy insured against loss or damage "resulting solely from collision with any moving or stationary object," excluding, however, "damage resulting from collision due wholly or in part to upsets," the court held that such clause of exclusion did not operate to defeat recovery where an automobile ran off a highway bridge, and was precipitated into the water below and landed at the bottom of the stream upside down, and that the collision was not due to the upset, but was the result of it, and allowed recovery. The court took the view that the water of the stream, and the earth beneath it, with which the automobile came in forcible contact, were objects within the meaning of the policy, and that no words in the policy limited the meaning of the term "object" to objects in perpendicular position or excluded those in horizontal position.

In Interstate Casualty Co. v. Stewart,[9] the facts were that while a car was being driven over a hill, the steering gear of the car went wrong, the driver lost control, the car ran down hill, left the road and ran into an embankment, crushing the wheel and overturning the car. It was held that the insured was protected by a clause in the policy covering loss "caused solely by being in collision with any other automobile, vehicle or other object, either moving or stationary."

In Fresberger v. Globe Indemnity Co.,[10] the plaintiff drove his car upon an elevator at the fourth floor of the garage. The lifting cable of the elevator broke, the elevator fell from the second floor into the elevator pit, and the automobile was damaged. The policy insured against damage, caused solely by accidental "collision with another object either moving or stationary." The loss was held to be covered by the terms of the policy, the court saying: "A collision or forcible striking is none the less embraced within the concept of the word, because there is interposed a carrying floor of an elevator which itself strikes the bottom of a pit, and communicates the force to the object itself."

In St. Paul Fire Marine Ins. Co. v. American Compounding Co.,[11] the insured left his car facing down hill and while the custodian was sweeping it out the next morning it started and ran off of a 25-foot precipice, striking the rock bottom of an excavation. The impact was held to be a collision with an object within a clause insuring the automobile against damage resulting from "accidental collision with any other automobile, vehicle or object."

In Rouse v. St. Paul Fire and Marine Ins. Company,[12] the automobile was damaged by skidding from an embankment, and colliding with the dirt at the bottom thereof. Under a policy excluding "damage caused by striking any portion of the roadbed," and insuring against damage resulting from "collision with any other automobile, vehicle or object," a recovery was allowed on the ground that the embankment was not a portion of the roadbed.

(8) 83 N. J. Law 641; 85 Atl. 194; 44 L. R. A. (N. S.) 70; Ann. Cas. 1914B, 846.
(9) 208 Ala. 377; 94 So. 345; 26 A. L. R. 427.
(10) 205 App. Div. 116; 799 N. Y. Supp. 310.
(11) 100 So. 904 (Ala.).
(12) 203 Mo. App. 603; 219 S. W. 688.

In Great American Mut. Indemnity Co. v. Jones,[13] the facts were the plaintiff below was driving his automobile on a brick road, which curved sharply, which curve the driver because of darkness, could not see and had no knowledge thereof and in attempting to make the curve the automobile turned over. The policy insured against damage resulting from "accidental collision with another object, either moving or stationary." The court in this case criticised the decisions in Bell v. American Insurance Co., Moblad v. Western Indemnity Co., Continental Casualty Co. v. Paul, and New Jersey Ins. Co. v. Young, on the ground that the court in those cases refused to apply the comprehensive definition of the terms "collision" and "object" as set forth by lexicographers and adopted the less scientific meaning as used in popular language, thus violating a fundamental rule in the interpretation of contracts that words are taken in their ordinary and proper signification, and that where an ambiguity exists it is to be resolved in favor of the insured and against the insurer. The court decided that the terms of the policy were sufficiently broad to include damage resulting from the facts as above set forth.

The decision is astute, and places liability on the insurer for the reason that by the very terms of the policy it excludes damage arising in certain cases which if such exceptions had not been inserted, might leave doubt as to whether a collision had occurred, thereby recognizing that a state of facts excluding damage, would constitute a collision within the terms of the policy, and saving itself from liability only by the expressed exceptions. Hence it would follow that if the facts of a given case would bring it within the class impliedly recognized as within the collision clause, the insurer can only save itself by reading an express exception into the policy. Say the court:

"It is to be observed that after covering 'accidental collision with another object, either moving or stationary,' the company in language selected by itself, and employed in the contract proffered to and accepted by the assured, specifically excluded 'ordinary breakage' and also provided as follows: 'Loss or damage to any tire due to puncture, cut, gash, blowout or other ordinary tire trouble, or in any event, loss or damage to any tire caused in accidental collision which also causes other loss or damage to the insured automobile shall not be covered hereby.' * * *

"Taking into consideration the entire clause of the policy in question, and applying the meaning of the terms 'collision' and 'object' as they seem to us to have been construed by the company itself by the insertion of the exceptions and exclusions stated, we are of the opinion that the injury sustained by plaintiff was covered by the policy."

Should this decision be generally followed and the underlying principle adopted by the courts, it would require insurance companies to write in their policies all exceptions of doubtful cases or none at all. It might have been better wisdom on the part of the insurer to have been content with exclusion as established by judicial construction rather than by express exception inserted in the policy. The tendency of the insurer has been to limit liability and as soon as doubtful cases have been decided to seek to protect itself by express stipulations excluding risk in the given circumstances so that if this tendency continue only the most obvious cases of "collision" will be covered and the policy will be so replete with exceptions that even many of the obvious cases may be read into the exceptions.

(13) 144 N. E. 596 (Ohio, June, 1924).

FOOD—IMPLIED WARRANTY

TEMPLE v. KEELER

144 N. E. 635

(Court of Appeals of New York. June 3, 1924)

Customer, entering restaurant and receiving, eating, and paying for food delivered to him on his order, impliedly makes known to vendor

particular purpose for which article is required, and, where he may assume that vendor has had opportunity to examine it, it conclusively appears that he relied on vendor's skill or judgment, so that there is implied warranty that food is reasonably fit for consumption.

Action by Jessie M. Temple against William H. Keeler. From judgment of Appellate Division (207 App. Div. 880, 201 N. Y. Supp. 951), unanimously affirming judgment for plaintiff on verdict, defendant appeals by permission. Affirmed.

The action was brought to recover for loss and damage alleged to have been caused plaintiff by sickness resulting, as alleged, from her eating fish in defendant's restaurant, which was unwholesome and unfit for human food, whereby she became ill from ptomaine poisoning.

ANDREWS, J. (1, 2) We hold that, where a customer enters a restaurant, receives, eats, and pays for food, delivered to him on his order, the transaction is the purchase of goods. We hold also that under such circumstances the buyer does by implication make known to the vendor the particular purpose for which the article is required, and, where the buyer may assume that the vendor has had an opportunity to examine the article sold, it appears conclusively that he relies upon the latter's skill or judgment. Rinaldi v. Mohican Co., 225 N. Y. 70, 121 N. E. 471. Consequently there is an implied warranty that the food is reasonably fit for consumption.

We have not before held that the owner of a restaurant sells the food which he provides for his guests. Indeed, in Race v. Krum, 222 N. Y. 410, 118 N. E. 853, L. R. A. 1918F, 1172, we refused to pass upon the precise question as not then before us. Yet we cannot logically differentiate the facts there involved from those in the case at bar. Miss Temple enters a restaurant, orders a portion of fish which the jury might find was unwholesome, receives it, eats it, pays for it, and later becomes ill, it may be inferred, as the result. Mr. Race enters a drug store, orders a portion of ice cream which was unwholesome, receives it, eats it, pays for it, and later becomes ill as a result. This, we said, was a sale. The names of the plaintiffs differ; one defendant owns a restaurant and the other a drug store. But these variances are not sufficient to lead us to distinguish the two cases. It has been said that a restaurant owner does not sell food, but renders a service—that a seat is furnished, the services of a waiter and cook, the use of plates and silver. There are seats before an ice cream counter. A clerk takes the order and delivers the food. Mr. Krum made or prepared the ice cream. It is eaten from a plate or glass with a fork or spoon belonging to the proprietor. It has also been said that in a restaurant, while the customer may consume such portion of his order as he desires, he may not carry away with him the remainder. If this be so, the same rule must apply to ice cream bought to be eaten in a drug store. In any event, the consequences sought to be drawn from this proposition do not follow. Even if true, the transaction may still be a qualified sale—a sale of what is actually used. We suppose a merchant might sell for a fixed price all of a pile of potatoes a customer might wish or be able to carry away.

Apart, however, from Race v. Krum, we would still be compelled to reach the same result by an authoritative decision. Even in construing a criminal statute we have held that a hotel keeper who places before his guests at dinner partridges, sells the birds, although the guests paid a total sum for board and lodging. People v. Clair, 221 N. Y. 108, 116 N. E. 868, L. R. A. 1917F, 766. Elsewhere, also, the same rule has been applied. Friend v. Childs Dining Hall Co., 231 Mass. 65, 120 N. E. 407, 5 A. L. R. 1100.

Other questions have been argued before us. We have examined them and find no error. The judgment appealed from should be affirmed with costs.

NOTE—*Liability of Restaurant Keeper for Serving Unfit Food.*—It will be noticed that the reported case holds that where a customer enters a restaurant, receives, eats and pays for food, delivered to him on his order, the transaction is the purchase of goods.

The older cases held that such a transaction was not a sale and purchase of food, but a rendering of service, and that there is no implied warranty of the fitness of the food. In some jurisdictions this old and rather absurd rule is still adhered to.

The case of Merrill v. Hodson, 88 Conn. 314, 91 Atl. 533, L. R. A. 1915B 481, follows the ancient rule. In jurisdictions following the old rule, liability for injuries caused by serving unfit food is grounded on negligence. Bigelow v. Maine C. R. Co., 110 Me. 105, 85 Atl. 396, 43 L. R. A. (N. S.) 627; Malone v. Jones, 91 Kan. 815, 139 Pac. 387, L. R. A. 1915A 328, affirmed on rehearing in 92 Kan. 708, 142 Pac. 274, L. R. A. 1915A 331; Travis v. Louisville & N. R. Co., Ala., 62 So. 851; Crocker v. Baltimore Dairy Lunch Co., 214 Mass. 177, 100 N. E. 1078, Ann. Cas. 1914B 884.

There is an article covering this subject in 92 C. L. J. 48.

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Attorney and Client** — Agreed Fee. — Where husband, under contract to pay attorneys certain fee for securing divorce by default and contingent fee dependent on success in case of contest, dismissed action without attorneys' consent, held that agreed fee for default was some evidence of reasonable value of services of attorneys down to discharge, sustaining judgment for that sum, less payments against husband.—Ayres v. Lipschutz, Cal., 228 Pac. 720.

2.——Disbarment.—A business transaction by which somebody purchased from a lawyer property, with which she became dissatisfied, cannot afford ground for disbarment where lawyer did not act as her attorney nor in a confidential relation, and kept within the law.—Buhler v. Trick, Ind., 144 N. E. 840.

3. **Assignment for Benefit of Creditors**—Garnishment.—The effect of an attempted assignment of all the assets of an insolvent corporation for the benefit of its creditors is to transfer the property to the assignee as bailee in trust, for the benefit of the creditors and stockholders, so that it is not subject to garnishment, and no one creditor can gain an advantage over the others by such proceedings.—M. L. Barrett & Co. v. Chilton, Mo., 264 S. W. 802.

4. **Automobiles**—Negligence.—In an action for injuries to and death of pedestrians on sidewalk into whom electric truck skidded due, to breaking of steering gear, held that it could not be ruled as matter of law that there was not some evidence tending to show adequate inspection would have disclosed source of danger and prevented injuries.—Lonergan v. American Railway Express Co., Mass., 144 N. E. 756.

5. **Bailment**—Res Ipsa Loquitur.—Where automobile intrusted to defendant for washing was, for that purpose, driven up an incline 20 feet long to level surface 40 inches above ground, and afterwards was found to be damaged ,and there was no showing of negligence aside from accident except testimony that high motor speed could cause the damage, doctrine of res ipsa loquitur was not applicable.—Scellars v. Universal Service Everywhere, Cal., 228 Pac. 879.

6. **Bankruptcy**—Claim for Wages.—One employed by bankrupt as a chief designer of radio sets, and to supervise their manufacture in accordance with his designs, held not entitled to priority of payment of a claim for his services as a "workman" or "servant," under Bankruptcy Act, § 64b(4), being Comp. St. § 9648.—In re Lawsam Electric Co., U. S. D. C., 300 Fed. 736.

7.——False Statements.—Under Const. U. S. art. 1, § 8, subd. 4, Bankruptcy Act is binding on state courts, and hence, under Bankruptcy Act, § 7, subd. 9 (U. S. Comp. St. § 9591), testimony of bankrupt before referee could not be considered by grand jury in support of indictment for false statements and representations made by bankrupt in offering corporate securities for sale to public.—People v. Elliott, N. Y., 206 N. Y. S. 54.

8.——Involuntary Petition.—Action of the stockholders of a corporation in consenting to its dissolution and placing its property in the hands of its directors as trustees for liquidation under the Connecticut statute, if regarded an act of bankruptcy as a general assignment, or as putting the property in the hands of receivers because of insolvency, is not a continuing act, and an involuntary petition based thereon must be filed within four months after such action was taken.—Jacobs v. Collegiate Preparatory School, U. S. D. C., 300 Fed. 734.

9.——Principal Place of Business.—A manufacturing corporation was organized under the laws of New York, and its principal place of business, as stated in its charter, was in New York City. It there kept a room in charge of an assistant secretary and assistant treasurer. The meetings of its directors and their various committees were held there, and the minutes of their meetings and the stock books were kept there. Its principal plant, in which at times 7,000 or 8,000 persons were employed, was located in Bridgeport, Conn., with a somewhat smaller subsidiary plant in Rhode Island. Its executive offices, its president and other executive officers, with a large clerical force, were in Bridgeport, and there its books of account were kept, contracts of purchase and sale were made, and bills sent out. Its principal bank account was kept in Bridgeport, and all checks signed there, and from that office most of its business correspondence with the public was conducted. All orders received at the New York office were forwarded there. Held that its "principal place of business," within the meaning of Bankruptcy Act, § 2 (Comp. St. § 9586), was in Connecticut, and that the court in that district had jurisdiction to adjudicate it a bankrupt in its voluntary petition.—In re American & British Mfg. Corporation, U. S. D. C., 300 Fed. 839.

10. **Banks and Banking**—Borrowing Money.—A contract by a state bank to borrow money in excess of the debt limit authorized by its charter is voidable, and not void; and where such contract has been fully performed, by the lending of money to such state bank and the execution and delivery of the notes therefor, the borrowing bank cannot refuse payment of the notes, in the absence of a statute which so provides.—State v. Farmers' State Bank of Winside, Neb., 200 N. W. 173.

11.——Personal Transaction.—Where proceeds of note executed by president of plaintiff bank and sent to defendant bank were sent to plaintiff and used by it, the transaction was not a personal one, so as to render payment of the note out of plaintiff's funds improper.—Keyes v. Security State Bank, U. S. C. C. A., 300 Fed. 897.

12.——Secret Agreement.—Any secret agreement of the cashier of defendant bank, on which plaintiff bank made a loan to a company of which the cashier was part owner, that on maturity of the company's note it could be charged to defendant, was not binding on defendant; plaintiff knowing at the time of the cashier's interest in the company to which the money was going, and that defendant could receive no actual benefit.—Live Stock State Bank v. First Nat. Bank, U. S. D. C., 300 Fed. 945.

13. **Bills and Notes**—Holder in Due Course.—"A payee who receives a negotiable instrument in good faith, for value, before maturity, and without notice of any infirmity therein, from a holder, not a maker or drawer, to whom it was negotiated as a completed instrument, is a holder in due course within the purview of the Negotiable Instruments Law Rev. St. 1913, §§ 5319-5513), so as to preclude the defense of fraud and failure of consideration between the maker or drawer and the holder to whom the instrument was delivered."—Farmers' State Bank of Craig v. Lydick, Neb., 200 N. W. 50.

14——Liability of Transferor.—Transferor, by delivery of bill or note payable to bearer or indorsed in blank, being mere conduit for transfer of legal title, incurs no liability.—Williams v. Gifford, Va., 124 S. E. 403.

15.——Payable Jointly.—Notes on printed forms containing name of bank as payee, above which name of individual was written, held payable jointly to either.—Sullivan v. Gaul, Iowa, 200 N. W. 12.

16. **Brokers**—Commissions.—After negotiations between brokers and purchaser has been abandoned by both parties, landowner then has right to enter into negotiations with purchaser and sell land without incurring liability to brokers.—Honaker v. Owens & Cowan, Ky., 264 S. W. 842.

17. **Carriers of Goods** — Confiscation.—Under Cummins Amendment of March 4, 1915, to Carmack Amendment (U. S. Comp. St. § 8604a), shippers of coal to tidewater piers, for sale in spot market thereat, could recover, on carrier's confiscation thereof, fair market value at destination, less cost of transportation and expense of sale, notwithstanding provision in tariffs approved by Interstate Commerce Commission that recovery be computed on basis of value at time and place of shipment; there being no impress of nonadjacent foreign commerce, to which Cummins Amendment does not apply.—Norfolk & W. Ry. Co. v. Nottingham & Wrenn, Va., 124 S. E. 398.

18.——Shipping Direction.—Tag on empty milk cans held not to be regarded as matter of law as shipping direction on the part of the owner shipper, when returned to express company by consignee after emptying them.—American Ry. Express Co. v. Mohawk Dairy Co., Mass., 144 N. E. 721.

19. **Carriers of Live Stock**—Negligence.—In an action against a common carrier to recover damages for negligent delay and rough handling in the interstate transportation of cattle, a showing that the cattle were moved in accordance with the regular schedule provided by the carrier for the movement of live stock, and that the cattle reached their destination within the time provided by such schedule, is not conclusive upon the question of whether or not the cattle received a reasonable movement under the circumstances, and where there is testimony introduced tending to show that a longer time was consumed in moving the shipment than was customary, the question as to what was a reasonable time for the transportation of the cattle then becomes a question of fact for the determination of the jury.—Chicago, R. I. & P. Ry. Co. v. Simmons, Okla., 228 Pac. 983.

20. **Champerty and Maintenance**—Quantum Meruit.—Generally, where contract between attorney and client for prosecution of an action is champertous, the attorney may recover on quantum meruit in same manner as if unlawful agreement had never existed.—In re Faling's Estate, Ore., 228 Pac. 821.

21. **Chattel Mortgages** — Notice.—Where the trustee of a common-law trust gave a chattel mortgage on property, which was not recorded within the time required by Rem. Comp. Stat. § 3780, and afterward sold it to the trust, his knowledge of the mortgage was not notice to the trust.—Lowman v. Gule, Wash., 228 Pac. 845.

22. **Constitutional Law**—City Ordinance.—Chicago Municipal Code, § 986, requiring persons selling coal or coke to provide driver of wagon with delivery ticket showing gross and net weights, and providing for reweighing, held unreasonable and void as inquisitorial in nature, and an abridgement of the privileges and immunities of the citizen without legal justification.—City of Chicago v. Kautz, Ill., 144 N. E. 805.

23.——City Ordinance.—Since conduct of drug business so far as it requires regulation is covered by Pharmacy Act, and regulations of drug stores is not provided for in Cities and Villages Act, city of Chicago was without power to enact ordinance providing for licensing and regulating sale of drugs commonly sold in drug stores.—Lowenthal v. City of Chicago, Ill., 144 N. E. 829.

24.——Service of Process.—G. L. c. 90, as amended by St. 1923, c. 431, § 2, by addition of sections 3a and 3b, relating to service of process upon non-resident motorist by delivery of precept to registrar of motor vehicles and mailing of notice of such service and copy of process, is not unconstitutional, being within the police power.—Pawloski v. Hess, Mass., 144 N. E. 760.

25. **Contempt**—Meaning of Decree.—In contempt proceedings for its enforcement, a decree will not be expanded by implication or intendment beyond the meaning of its terms, when read in the light of the issues and the purpose for which the suit was brought, and the facts found must constitute a plain violation of the decree so read.—Terminal R. Ass'n v. United States, U. S. S. C., 45 Sup. Ct. 5.

26. **Contracts**—Estimated Cost.—Where one of its organizers in charge of work for corporation instructed plaintiff to go ahead with installation of electric motors, when informed that change of system agreed to by him would greatly increase cost of installation over plaintiff's estimate, and plaintiff installed the motors to corporation's constructive knowledge, it was bound to pay therefor.—Penn Electrical Engineering Co. v. Penn Silk Throwing Co., Pa., 126 Atl. 237.

27.——Fraud.—A contract may be avoided on the ground of fraud, though the fraud was not the only or sole inducement.—First Savings Bank v. Edgar, Iowa, 199 N. W. 1011.

28.——Specified Location.—Where a number of persons entered into a contract with another wherein it was agreed that, if he would submit a bid to the post office department to lease a building on a particular lot, properly equipped with the necessary post office fixtures, and that, if such bid should be accepted, he would build, equip and lease the building to the government for post office purposes, they would each pay his contributive share for the purchase of the equipment and also rental as long as the same should be occupied as a post office, not to exceed 10 years, and where it appears from the contract that it was not in contemplation of the parties that he should exercise any influence or perform any service to secure such location other than submitting a bid and building and equipping the building, such contract was not void as being against public policy, but is an enforceable contract.—Riedt v. Platt, Okla., 228 Pac. 1096.

29. **Corporations**—Authority of Agent.—Testimony that treasurer of trust company had signed other instruments of like nature in name of trust company with knowledge of its president and other officers was competent as tending to show an established course of authority to execute contract of guaranty, in view of R. L. c. 116, §§ 7, 8, now G. L. c. 172, §§ 12, 13.—Nowell v. Equitable Trust Co., Mass., 144 N. E. 749.

30.——Corporate Entity.—While in theory a corporation is a distinct entity from the persons controlling it, this fiction will be disregarded where a recognition of it would permit the perpetration of a fraud or the accomplishment of an unlawful object.—M. Lowenstein & Sons v. British-American Mfg. Co., U. S. D. C., 300 Fed. 853.

31.——Delivery of Stock.—If registered holder of certificate of stock in New Jersey corporation, domiciled in England as agent of German corporation, surrendered certificate on demand of British public trustee, there was delivery within New Jersey common law, though delivery was compelled by sanctions of English statute; but if certificate was forcibly seized there was no valid delivery.—Director Der Disconto-Gesellschaft v. U. S. Steel Corp., U. S. D. C., 300 Fed. 741.

32.——Service of Process.—Under Pub. Acts 1921, No. 84, and Comp. Laws 1915, § 12439, service of process on last president of corporation, whose resignation had been accepted, while corporation was in process of dissolution, held sufficient, notwithstanding vice-president presided at two or more stockholders' meetings after president's resignation.—California Bean Growers' Ass'n v. Lewellyn Bean Co., Mich., 200 N. W. 162.

33.——Stock Subscription.—That officers of corporation have managed its affairs badly or fraudulently will not entitle one to rescission of his stock subscription agreement.—Brame v. Guarantee Finance Co., Va., 124 S. E. 477.

34.——Surrender of Stock.—Const. § 193, and Ky. St. § 568, forbid corporation, decreasing amount of its stock by pro rata surrender by stockholders to treasury, from returning stock to stockholders without consideration when it gets in better financial condition.—Scheirich v. Otis-Hidden Co., Ky., 264 S. W. 755.

35.——"Voting Trust."—Stockholders' agreement to deposit preferred stock with committee, to liquidate accumulated cumulative dividends and to refund mortgage, specifically providing that no title nor beneficial interest should pass to committee, held not to create voting trust.—International Paper Co. v. State, N. Y., 296 N. Y. S. 57.

36. **Divorce**—Abandonment.—For husband, without cause, to treat wife in manner to compel her to leave him, is "abandonment" and "desertion" by him.—Hoffhines v. Hoffhines, Md., 126 Atl. 112.

37. **Elections**—Absent Voters.—Voters absent from county of residence on election day because of employment in harvesting peaches in orchard near county line, held unavoidably absent, within Absent Voters' Law (Crawford & Moses' Dig. § 3810 et seq.), which refers to unavoidability because of ordinary occupation or business.—Jones v. Smith, Ark., 264 S. W. 950.

38. **Fraud**—Waiver.—Any act of a defrauded party which recognizes the binding force of a contract, the execution of which was induced by fraud of the other party, constitutes an affirmance of the contract, and waives the right of rescission on account of fraud, but does not necessarily waive the right to recover damages for fraud.—Holcomb & Hoke Mfg. Co. v. Jones, Okla., 228 Pac. 968.

39. **Frauds, Statute of**—Parol Agreement.—Where defendant went into possession under written contract to purchase from plaintiff, building house and residing on premises, and subsequently on foreclosure of deed of trust given to plaintiff by third person plaintiff bid in premises pursuant to oral agreement to sell to defendant if latter would not bid, held that defendant's asserted right to purchase could not be defeated on theory that oral agreement brought transaction within statute; position of parties not having changed, except as to amount of debt due from defendant, and real contract, being written one, which remained alive, measuring rights of parties.—Braun v. Dallin, Cal., 228 Pac. 740.

40 **Fraudulent Conveyances**—Mortgaged Property.—Purchaser of lots under installment plan, held creditor from an equitable standpoint, entitled on final payment to have mortgage covering such lots and executed by president of vendor company as security for his personal debts canceled as a cloud on purchaser's title.—Sandmeyer v. Fidelity-Union Trust Co., N. J., 126 Atl. 212.

41. **Income Tax**—Increase in Assets.—Where borrower of German marks repaid debt eight years later, when marks had fallen in value difference was not taxable as income, under Const. Amend. 16, nor Revenue Act Nov. 23, 1921. §§ 213, 230 232, 233 (Comp. St. Ann. Supp. 1923, §§ 6336⅛ff, 6336⅛nn, 6336⅛oo, 6336⅛p), since it was not derived from employment of capital, labor, or both, or from sale or conversion of capital assets resulting in profit, there being no such thing as negative income.—Kerbaugh-Empire Co. v. Bowers, U. S. D. C., 300 Fed. 938.

42.——Non-Resident Stockholders.—Receipt of corporate dividends by non-resident in state of his domicile does not constitute "doing business" within meaning of Income Tax Act. § 3, imposing such tax upon non-resident individual doing business in State.—Standard Lumber Co. v. Pierce, Ore., 228 Pac. 812.

43. **Insurance**—Incontestable Clause.—Incontestable clause is agreement that, after certain period, insurer is estopped to contest policy or set up any defense, except such as may be reserved therein, or is allowed on ground of public policy, but does not waive all defenses or condone fraud, and in case of breach of warranty insurer must assert its claim within named period, either by affirmative action or by defense to suit brought on policy by beneficiary within time limited.—Powell v. Mutual Life Ins. Co., Ill., 144 N. E. 825.

44.——Proportion of Liability.—Where fire insurance policies, considered as constituting one contract insured a building and its contents against loss by fire, and provided that insurer "shall be liable for no greater proportion of any loss than the amount hereby insured bears to 90 per cent of the actual cash value of the property described" held that loss is to be determined by considering the building and contents as one item, and not by taking the cash value thereof separately.—Fireman's Ins. Co. v. Temple Laundry Co., Ind., 144 N. E. 838.

45.——Proximate Cause.—Where injury results in blood poisoning, which causes insured's death, proximate cause of death is injury, and not blood poisoning.—Knowlton v. Preferred Accident Ins. Co., Iowa, 199 N. W. 1014.

46.——Violation of Policy.—Keeping on insured property one gallon glass container filled with gasoline held not violation of policy, which prohibited keeping of gasoline in excess of 25 pounds in quantity, and which contained rider authorizing keeping not to exceed 10 gallons, if kept in closed metal can free from leak.—Oberman v. United States Fire Ins. Co., Ill., 144 N. E. 798.

47. **Labor Unions**—Restraint of Competition.—rule of the Brotherhood of Painters, Decorators and Paper Hangers of America. Obligatory on its local unions, provides that, where a contractor shall take a contract to perform work outside of his home territory as defined by the union, he shall be obliged to pay local workmen the rate of wages, and otherwise conform to the union rules and regulations in force in his home territory, if more favorable to the workmen than the local rates and rules, and forbidding local workmen from working for such contractor unless such rule is observed, under penalty of fines and expulsion from the union. Held that such rule is unlawful, as an unreasonable restraint of competition, in violation of the rights of contractors and the public, in that it practically makes it impossible for an outside contractor to bid on local work, and a foreign contractor, having a contract within the territory of a local union, held entitled to an injunction to restrain its enforcement by such union.—J. I. Hess, Inc., v. Local Union No. 17, Etc., U. S. D. C., 300 Fed. 894.

48. **Master and Servant**—Course of Employment. Village marshal and street commissioner, killed while climbing pole not owned by village to put banner across street, in preparation for village homecoming celebration at request of chairman of club committee in charge of celebration, was not engaged in scope of his employment at time of accident.—Hall v. Village of Montague, Mich., 200 N. W. 133.

49.——Scope of Employment.—Whether truck driver operating delivery truck at time of accident was acting within scope of employment, though off of route which it was claimed he would have taken had he followed specific directions, held question for jury.—Jordan Stabler Co. v. Tankersley, Md., 126 Atl. 65.

50. **Mechanics' Liens**—Preference.—Laborer hired by day did not lose right to preference as laborer as respects claim for labor, over lienors who filed liens before his, because under agreement with general contractor, after his employment he furnished building materials.—Glatt v. Meade, N. Y., 206 N. Y. S. 64.

51. **Mines and Minerals**—Cancellation of Lease.—The filing of a petition in bankruptcy against lessee or sublessee in coal lease did not affect the right of lessor to cancel the lease for default in payment of royalties.—Cassidy v. E. M. T. Coal Co., Ky., 264 S. W. 744.

52. **Municipal Corporations**—Distribution of Circulars.—City ordinance prohibiting distribution of circulars, pamphlets, etc., in public streets, when deemed to prohibit distribution of pamphlets criticizing municipal management, and containing matter of general interest, is unreasonable.—Coughlin v. Sullivan, N. J., 126 Atl. 177.

53.——Street Grade.—Variance from established grade, in ordering permanent street improvement, is not jurisdictional matter depriving council of jurisdiction to assess abutting owners.—In re Audubon and Ninth Streets, Iowa, 299 N. W. 983.

54.——Suit on Tax Bill.—Although Rev. St. 1909, § 9075, provided that suit on a tax bill to collect for public improvement should be brought in name of city to use of contractor, judgment of foreclosure in suit on tax bill not opposed by landowners, cannot be attacked collaterally, because not brought in name of city, by either holder of another tax bill, prior in date but junior in right,

nor by property owners, regardless of fact that junior lienholder was not party to the suit.—City of Springfield v. Ransdell, Mo., 264 S. W. 771.

55. **Nuisance**—Bawdyhouse.—Laws 1921, p. 523, §§ 1, 2, making establishment or maintenance of a bawdyhouse a public nuisance abatable by injunction, held not unconstitutional as violating federal Const. Amend. 5, or Const. art. 2, § 23, by permitting double jeopardy as making defendant testify against himself, as violating federal Const. Amend. 14, by depriving defendant of liberty without due process of law, without charge against her or jury trial, nor as providing punishment for crime by civil action, and enforcement of criminal law by injunctive process.—State v. Kearns, Mo., 264 S. W. 775.

56. **Principal and Agent**—Agent's Declarations. —Before declarations of agent will be received in evidence for purpose of binding principal, prima facie case of agency must be established.—Vincent, Albin & Strahl v. Hines, Iowa, 200 N. W. 1.

57. **Railroads**—Crossing.—Undisputed evidence that plaintiff stopped her car within 12 feet of crossing, looked both ways, and listened, but saw no train, and heard no signal, and evidence that no signal was given, and that curves and cuts obstructed view of approaching trains, held to show absence of contributory negligence.—Hart v. Chicago, M. & St. P. Ry. Co., Mo., 264 S. W. 902.

58.——Crossing.—In an action against a railroad company for causing death, testimony of one or two witnesses, who only glanced at deceased tending to show that he did not keep a proper lookout as he drove upon a crossing, was not sufficient as a matter of law to overcome the presumption of due care on his part.—Razzis v. Philadelphia & R. Ry. Co., Pa., 126 Atl. 204.

59.——Taxation.—It would not be violative of Const. U. S. Amend. 14, to assess franchise of railroad in state upon mileage basis, treating its lines in and out of the state as single system, notwithstanding line within state is not connected with lines out of state except by a terminal railroad company jointly owned by several railroads, under Ky. St. § 4081.—Southern Ry. Co. v. Commonwealth, Ky., 264 S. W. 850.

60. **Removal of Causes**—Federal Receivership.— Jurisdiction of action against federal receivers of street railway for personal injuries arising in operation of railway by receivers, held properly assumed by state court, as against contention receivers were officers of United States court and cause was removable under Judicial Code, § 33 as amended by Act Aug. 23, 1916 (U. S. Comp. St. § 1015).—Hartman v. Fleming, Mo., 264 S. W. 873.

61.——Injury to Seaman.—Though, under La Follette Act, § 20, as amended by Jones Act, § 33 (Comp. St. Ann. Supp. 1923, § 8337a), and under Comp. St. § 8660, state court may have concurrent jurisdiction of seaman's action for injuries, with common-law right of trial by jury, as matter is strictly maritime, where issue of vessel's unseaworthiness is involved the case is removable to a federal court.—Petterson v. Hobbs, Wall & Co., U. S. D. C., 300 Fed. 811.

62.——Separable Action.—Where the liability of defendants, as set forth in the pleadings, is joint, or joint and several, the controversy is not separable, and plaintiff's purpose in joining a resident defendant is immaterial.—Lynes v. Standard Oil Co., U. S. D. C., 300 Fed. 812.

63. **Sales**—Breach of Warranty.—Under Uniform Sales Act, §§ 33, 36, subsec. 1, an infant injured by defective working of a gas heater may not recover of sellers for false warranties of serviceability made to parents; there being no privity of contract.—State v. Consolidated Gas, Electric Light & Power Co., Md., 126 Atl. 105.

64.——Inspection.—Under contract providing that buyer would send inspector to inspect cars at point of shipment, but containing no agreement that his decision should be conclusive, buyer was liable for contract price, regardless of quality, if goods tendered were actually accepted by inspector, or, regardless of his failure to inspect, if goods were of quality specified in contract.—Collier Commission Co. v. Wright, Ark., 264 S. W. 942.

65.——Reasonable Time.—Under Gen. St. Conn. 1918, § 4746, providing that all conditional sales not made in conformity with section 4744, requiring the contracts to be recorded within a "reasonable time," shall be held absolute sales, except as between vendor and vendee, "or their personal representatives," the trustee in bankruptcy of a vendee is not his personal representative, but under Bankruptcy Act, § 47a (2), as amended by Act June 25, 1910, § 8 (Comp. St. § 9631), represents his creditors.—In re Sternberg, U. S. D. C., 300 Fed. 881.

66.——"Used During the Season."—Term "used during the season," as used in sales contract, made April 5, providing for reduced price on caps for beer bottles, if 100,000 were used during season, held to mean, at most, the remaining months of the year, and to entitle buyer to caps actually used, during the period specified only.—Sterling Cork & Seal Co. v. Ph. Kling Brewing Co., Mich., 200 N. W. 142.

67. **Ships and Shipping**—Collision.—The owner of a car float lift securely moored to a pier, but which, as shown by the evidence, was intentionally cast adrift without its authority or knowledge, held not liable for collision between the float and anchored vessels.—The No. C-4, U. S. D. C., 300 Fed. 757.

68. **Street Railroads**—Negligence.—Ordinance rate of speed does not necessarily preclude common-law negligence as to speed, if surrounding conditions indicate negligence.—Montague v. Missouri & K. I. Ry. Co., Mo., 264 S. W. 813.

69. **Warehousemen**—Rate Base.—Prudent investment method used by department of public works in establishing rate base for warehouses by which they were allowed income slightly in excess of 10 per cent on moneys prudently invested, plus a reasonable operating surplus held not in violation of Const. U. S. Amend. 14, being prescribed by statute.—Pacific Coast Elevator Co. v. Department of Public Works, Wash., 228 Pac. 1022.

70. **Workmen's Compensation**—Alien Dependents.—Alien non-resident parents of deceased employee held not entitled to recover compensation, since decedent, by acceptance of provisions of Compensation Act, had contracted in accordance with Workmen's Compensation Act June 2, 1915, § 310 (P. L. 736; Pa. St. 1920, § 22007), that dependents "not residents of the United States" should not be entitled to compensation.—Liberato v. Royer, Pa., 126 Atl. 257.

71.——Independent Contractor.—One chopping wood at a certain amount per cord, who fixed his own time and hours of work, employer exercising no direction or control over work, except to designate place for cutting, and not furnishing tools, but giving him those which another had left when quitting, was an "independent contractor," not entitled to benefit of Workmen's Compensation Act.—Valente v. Industrial Acc. Commission of California, Cal., 228 Pac. 667.

72.——Stevedore on Dock.—Where pay roll of respondent stevedore whose work was entirely on land was separated from pay roll of stevedores working on ship and his employer paid a premium to Industrial Insurance Department for work done by respondent which was accepted and retained, held that he brought himself with Rem. Comp. Stat. § 7694, making compensation act applicable to workmen engaged in maritime occupations in certain cases.—Scott v. Department of Labor and Industries, Wash., 228 Pac. 1013.

73.——Fellow Employee.—Where claimant, in attempting to discipline a co-employee, twitted him, and being provoked by personal jeers and scoffs from the latter struck him, and in so doing broke his thumb, held that, though the employment may have afforded the opportunity, it was not the contributing proximate cause of the injury under the statutory phrase "arising out of the employment."—Gray's Case, Me., 121 Atl. 556.

Index-Digest

To the Editorials, Notes of Recent Decisions, Leading Articles, Annotated Cases, Legal News, Correspondence and Book Reviews in Vol. 97

A separate subject-index for the "Digest of Current Opinions" will be found on page 421, following this Index-Digest.

Subject-Index

To All the "Digests of Current Opinions" in Vol. 97

This subject-index contains a reference under its appropriate head to every digest of current opinions which has appeared in the volume. There are no cross-references, but each digest is indexed herein under that head for which it would most naturally occur to a searcher to look. The page to which reference is made may contain more than one case on the subject under examination, and to make a thorough search it will be necessary to scan each case listed under the subject heading.